

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

THE CITY OF NEW YORK,	*	Case No. 20-CV-05965 (ENV)
	*	
Plaintiff,	*	Brooklyn, New York
	*	May 19, 2022
v.	*	
	*	
OLD DOMINION TOBACCO	*	
COMPANY, INC.,	*	
	*	
Defendant.	*	
	*	
* * * * *		

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE  
BEFORE THE HONORABLE RAMON E. REYES, JR.  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	SABITA L. KRISHNAN, ESQ. HOPE LU, ESQ. New York City Law Department 100 Church Street New York, NY 10007
--------------------	--

For the Defendant:	MARY G. W. METCALFE, ESQ. AVI D. SCHICK, ESQ. Troutman, Pepper, Hamilton, Sanders, LLP New York, NY 10022
--------------------	---

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

**Fiore Reporting and Transcription Service, Inc.**  
**4 Research Drive, Suite 402**  
**Shelton, Connecticut 06484 (203)929-9992**

1 (Proceedings commenced)

2 THE COURT: I apologize. Good afternoon. This is  
3 Magistrate Judge Reyes. We're holding a telephone conference  
4 in the case of The City of New York versus Old Dominion  
5 Tobacco Company, docket number 20-CV-5965.

6 Counsel for the plaintiff, please state your name  
7 for the record.

8 MS. KRISHNAN: Good afternoon, Your Honor. This is  
9 Sabita Krishnan on behalf of The City of New York from the  
10 Office of Corporation Counsel.

11 THE COURT: Is there anyone else on for you, for the  
12 City.

13 MS. LU: Yes, Your Honor.

14 MS. KRISHNAN: Yes, Your Honor. My colleague --  
15 Go ahead, Hope.

16 MS. LU: Your Honor, this is Hope Lu, also with  
17 plaintiff, City of New York, Office of Corporation Counsel.

18 THE COURT: Okay. And who is on for the defendant?

19 MS. METCALFE: Good afternoon, Your Honor. This is  
20 Mary Grace Metcalfe with Troutman Pepper. Also with me is Avi  
21 Schick, Troutman Pepper.

22 THE COURT: Good afternoon.

23 Okay. So you have some discovery disputes that you  
24 need to resolve, correct?

25 MS. KRISHNAN: Yes, Your Honor.

1 MS. METCALFE: Yes, Your Honor.

2 THE COURT: All right. So I'll hear from the City  
3 first.

4 MS. KRISHNAN: Thank you, Your Honor.

5 THE COURT: Go through them one by one and we'll  
6 deal with them serrate.

7 MS. KRISHNAN: Sure. So, Your Honor, the first  
8 dispute is relating to plaintiff's request for discovery  
9 relating to defendant's sales and communications with specific  
10 customers.

11 And in this regard the complaint pleads allegations  
12 that the defendant supplied its customers and retail stores  
13 with large quantities of cigarettes knowing that those store  
14 were selling to cigarette traffickers.

15 And the complaint includes an example of one such  
16 store and that is Cigarettes Unlimited. But the allegations  
17 are not limited to defendant's sales to that particular retail  
18 store. The allegations are that defendant supplied multiple  
19 customers with large quantities of cigarettes.

20 And the complaint also specifically alleges that  
21 Altria, also known as Philip Morris, warned the defendant in  
22 multiple communications about the quantity of its -- the  
23 volume of it's sales to a number of customers.

24 And huge here is that plaintiff used those  
25 communications from Altria to identify four customers that

1 repeatedly are included on these communications as customers  
2 to whom defendant is selling in very large quantities. And  
3 we're seeking targeted and reasonable communication about the  
4 defendant's sales and communications with those four stores.

5 And defendant's position appears to be that because  
6 those four stores are not specifically mentioned in the  
7 complaint that the plaintiff cannot seek such discovery. And  
8 that's simply not the case.

9 But in any case the complaint does allege that  
10 Altria warned the defendant about its sales to specific  
11 customers and we are selecting four of those customers that  
12 were included on numerous warning lists.

13 And so we think this is targeted and reasonable  
14 discovery. We're not seeking discovery about defendant's  
15 sales to all of its customers. We've targeted our request to  
16 these four and two other customers for which there's no  
17 dispute.

18 And to the extent that defendant's position is based  
19 in a dispute about the meaning of the communications from  
20 Altria, then, you know, that's really a factual dispute and  
21 it's not a basis for which defendant can use to refuse to  
22 produce discovery about its sales to those stores.

23 So that's really the dispute, Your Honor, about the  
24 discovery that is sought with respect to four specific  
25 customers.

1           And I'll pause there. I don't know if you want me  
2           to go to the next dispute or if you want to hear from me.

3           THE COURT: I want to take them one by one, so why  
4           don't we hear from Ms. Metcalfe.

5           MS. METCALFE: Thank you, Your Honor. A couple of  
6           quick points.

7           The City says that it specifically alleges that  
8           Atlantic Dominion provided multiple cigarette retailers with  
9           cigarettes in excess, that they were warned about the quantity  
10          of these cigarettes, and that these warnings were tied to  
11          cigarette trafficking and that's just not the case.

12          The City alleges that between April 2019 and May  
13          2019 cigarette traffickers purchased cigarettes from a  
14          cigarette retail store located in Spotsylvania County,  
15          Virginia. They have since informed --

16          THE COURT: Paragraph 34?

17          MS. METCALFE: Yes.

18          THE COURT: Does it start with for example?

19          MS. METCALFE: It does. And that is why you'll see  
20          that despite the fact that there is no allegation anywhere in  
21          the complaint about FreeCo, FreeCo, one of the six stores  
22          about which the City has sought discovery, is one to which  
23          Atlantic Dominion has agreed to produce documents.

24          FreeCo, Your Honor may be aware, was brought up in  
25          response to Atlantic Dominion's motion to dismiss the

1 complaint.

2 In opposition to the motion to dismiss the City for  
3 the first time raised the issue of FreeCo also being a store  
4 to which Atlantic Dominion sold cigarettes and also being a  
5 store that they believed was involved in cigarette  
6 trafficking.

7 Putting aside the impropriety of amending a  
8 complaint in response to a motion to dismiss through the  
9 opposition papers, Atlantic Dominion has agreed to produce  
10 documents responsive to those Cigarettes Unlimited and FreeCo.

11 The other four retail stores are completely  
12 separate. There is no allegation from the City that these  
13 stores engaged at all in cigarette trafficking. There is no  
14 allegation that these stores in any way are connected to the  
15 allegations raised in the complaint or even the allegations  
16 raised in opposition to the motion to dismiss.

17 And while the City tries to get around the fact that  
18 -- well, let's back up a second.

19 The City bases this request on the emails from  
20 Philip Morris that are tied to whether or not the volume of  
21 cigarettes Atlantic Dominion is providing to retail stores all  
22 within the guidelines for promotional money. We've discussed  
23 this at length in our motion to dismiss.

24 While the City selectively quotes one of these  
25 emails in its complaint, we attach it in its entirety to the

1 motion to dismiss. There is no mention of cigarette  
2 trafficking. It's very clear this is tied to the promotional  
3 money.

4 And while the City says that this is a question of  
5 fact, Your Honor, in fact, this is a question of the law.  
6 Because to the extent that the City has referenced the  
7 document in its complaint, it is part of the complaint and it  
8 can be considered in its entirety.

9 And as a matter of law, if what is contained in the  
10 document contradicts or disproves what the City says in its  
11 complaint, then as a matter of law that document controls.  
12 And the document itself does not anywhere mention that the  
13 warning is tied to cigarette trafficking. Again, very clear  
14 it's tied to the promotional program in which Atlantic  
15 Dominion was participating.

16 Atlantic Dominion is really trying to be reasonable  
17 here. Even though our motion to dismiss has been pending  
18 since September 2nd, and even though we oppose any inclusion  
19 of FreeCo in this dispute because they're not pled in the  
20 complaint, we are participating in the discovery process as  
21 reasonably as we can and in good faith by agreeing to FreeCo.  
22 But that doesn't mean that we're opening the door to the City  
23 conducting an unrestricted fishing expedition for retail  
24 information unrelated to any allegation of trafficking.

25 MS. KRISHNAN: Your Honor --

1 THE COURT: Ms. Krishnan, do you want to respond?

2 MS. KRISHNAN: Yes.

3 So the complaint states that Philip Morris, or  
4 Altria, warned Atlantic Dominion on approximately 53 separate  
5 occasions that the cigarette retail stores, or stores  
6 identified in its emails, met the criteria Philip Morris had  
7 established to conclude that the retailer was supplying  
8 cigarette traffickers.

9 Now --

10 THE COURT: Where is that information, please?

11 MS. KRISHNAN: That's paragraph 45.

12 Now, counsel refers to the quoted language and the  
13 email that contains that language, but the context behind that  
14 email, and why it was sent, and the contours of the program  
15 that she's referring to that defendant was participating in,  
16 that is all subject to factual discovery.

17 And we have and have provided counsel with an  
18 affidavit from Philip Morris explaining that, yes, indeed,  
19 these communications were to warn the defendant about its  
20 sales, large quantities of sales to specific customers.

21 So, you know, as I said, the meaning of this  
22 communication is a factual dispute. And we have alleged based  
23 on the information that we have, that the purpose of those  
24 communications were, among other purposes, to identify  
25 specific customers for whom there were very large quantities



1 of sales.

2 And so we think this is not a fishing expedition.  
3 We are using specific emails. We have more than 53 of them,  
4 but at least 53 occasions, and we've identified from those  
5 occasions four stores.

6 Now, these emails from Philip Morris include well in  
7 excess of four stores. So we have gone through and we have  
8 selected the ones that appear to repeatedly be included on  
9 these warning lists. So this is far from a fishing expedition  
10 and it is directly connected to the allegations in the  
11 complaint.

12 THE COURT: What are the documents, the specific  
13 documents, that you're seeking, because I don't have the  
14 written discovery requests in front of me.

15 MS. KRISHNAN: We are seeking documents relating to  
16 the transactions with those customers and we are seeking  
17 communications with the employees of that company relating to  
18 the sales of cigarettes.

19 UNIDENTIFIED: All right. Your Honor, if I can just  
20 clarify. We're seeking all documents concerning  
21 communications between Atlantic Dominion and these stores, all  
22 documents concerning transactions between Atlantic Dominion  
23 and these stores, all documents concerning communications  
24 between Atlantic Dominion and any employee of these stores,  
25 and so on and so forth.

1           This isn't a targeted search. This is the broadest  
2 possible set of requests for documents in Atlantic Dominion's  
3 possession that touch upon these retailers in any way.

4           UNIDENTIFIED: Your Honor, we made the same requests  
5 relating to Cigarettes Unlimited and FreeCo and we worked with  
6 counsel to address their concerns about those requests and  
7 we're willing to do the same with respect to these requests.

8           THE COURT: The discovery is relevant so you're  
9 going to meet and confer on the extent of the production with  
10 respect to these communications with the four stores, four  
11 other stores I guess I should say, and what documents to be  
12 produced.

13           Let's move on to the dispute regarding the time  
14 frame.

15           MS. KRISHNAN: Yes, Your Honor.

16           So we have sought discovery from January 2012 to the  
17 present. And the reason that we proposed that time frame is  
18 because the discovery is in part related to defendant's  
19 knowledge that it was selling cigarettes to its customers that  
20 were then selling to cigarette traffickers.

21           And the evidence regarding that knowledge is not  
22 limited by the statute of limitations, so transactions or  
23 communications that occurred outside the statute of  
24 limitations would be relevant to establishing defendant's  
25 knowledge.

1 And, indeed, in connection with our opposition to  
2 defendant's motion to dismiss, we submitted a declaration that  
3 indicates retail stores used Atlantic Dominion, the defendant,  
4 as their sole or primary supplier to obtain cigarettes well  
5 excess in what -- in excess of what they could reasonably sell  
6 locally and that that process went back as far as 2009.

7 And so we're not seeking discovery going back to  
8 2009. We've selected 2012 to the present. And we think  
9 that's the appropriate time frame because what we're talking  
10 about here is not -- is the issue of knowledge and we're not  
11 limited in that respect by the statute of limitations.

12 Now, again, we have --

13 THE COURT: What is the statute of limitations?

14 MS. KRISHNAN: I believe -- you know, I think we  
15 might have a dispute about -- we might not agree -- I believe  
16 our position is that it's five years. But, in any case,  
17 seeking discovery prior to the statute of limitations.

18 THE COURT: So it would be -- it would be -- this  
19 was filed in --

20 MS. KRISHNAN: The end of 2020.

21 THE COURT: Twenty-fifteen, and you're looking for  
22 three years prior to that?

23 MS. METCALFE: They're looking for eight years prior  
24 to that, closer to nine, Your Honor.

25 THE COURT: No, I mean, three years -- eight years

1 prior to the filing of the complaint, but three years before  
2 the statute of limitations starts to -- starts to run. That's  
3 why I'm thinking it's eight. I mean --

4 MR. SCHICK: I think it's four years prior, Your  
5 Honor, because they filed at the very end of calendar year  
6 2020 and they're seeking --

7 THE COURT: Oh, I see. Yeah. I see (indiscernible)  
8 --

9 MR. SCHICK: -- the beginning of the calendar year  
10 2020. So, yes. So it's essentially -- it's four -- it's four  
11 full years prior even under their version of the statute of  
12 limitations.

13 THE COURT: And what's the defendant's position on  
14 the statute of limitations? You don't -- you don't think it's  
15 five years?

16 MR. SCHICK: I would say we have not -- Your Honor,  
17 we have not addressed that yet in any of our filings. Our  
18 position with respect to this request is going back, you know,  
19 nine years for discovery where again it's really tenuous.  
20 They're saying they want every communication and every, you  
21 know, document relating to, you know, again, entities that are  
22 not, you know, very well specified as we just heard before.  
23 And so, you know, let them get --

24 Your Honor has just ruled that they have to -- that  
25 we have to produce many years of documents and communications

1 and records with respect to four additional entities. It's  
2 hard-pressed, Your Honor, it would be hard-pressed to come  
3 back and say, well, there's nothing there in the entire  
4 statute of limitations period but let them go back years  
5 later, but, you know, unless they want to build on something.

6 But, you know, we've now been ordered to make, you  
7 know, a very substantial additional search and production on  
8 four, you know, with respect to four retailers, and two we've  
9 already had no dispute about, so they'll have, you know, a  
10 full set of records for six stores that they say are at the  
11 nexus of this trafficking.

12 And, you know, if they're not going to have any  
13 knowledge documents in connection with this massive production  
14 and search for these six entities, then I think, you know,  
15 they can come back then and say Your Honor we need to go back  
16 further. I think they'll be hard-pressed to establish how,  
17 you know, there's nothing going on in the limitations period,  
18 but it's earlier. But, you know, we can address that later.

19 I think to make the entity to go back at this point  
20 in time while, you know, the motion to dismiss is pending and  
21 while the existing order to do a massive search and production  
22 for four additional retail stores is more than sufficient.

23 MS. METCALFE: Especially because, again, Your  
24 Honor, if you look at the complaint itself, the period that  
25 they've identified for trafficking is 2019 to -- is April to

1 May of 2019, and in their letter they say 2019 to 2020.

2 So even going off of the allegations presented by  
3 the City, there's no basis for suggesting that they could be  
4 involved, they could have knowledge, when the trafficking  
5 itself didn't even occur during that time period.

6 MS. KRISHNAN: Your Honor, can I -- can I respond  
7 briefly?

8 THE COURT: Yes.

9 MS. KRISHNAN: So the language about 2019 to 2020 is  
10 again in the four example period. As I noted in our papers in  
11 opposition to the motion to dismiss, we have put in evidence  
12 that this practice of defendant selling in extremely large  
13 quantities to its customers went back to 2009.

14 Now, with respect to the suggestion that they --  
15 that defendant produce documents within the period that  
16 they've proposed and then we come back and consider whether  
17 they should have to produce documents going back further, you  
18 know, for -- part of this request involved a search for email  
19 communications and that simply doesn't seem like an efficient  
20 or reasonable way to proceed here.

21 If you're searching for email communications and  
22 doing a collection, the most reasonable and efficient thing to  
23 do is collect all of it, do a search, and then have a  
24 discussion about what a reasonable and -- what's unreasonable  
25 and what's reasonable, what's burdensome and not burdensome.

1           Now, with respect to non-email communications, we  
2       really haven't heard anything about why this is so burdensome.  
3       And to the extent that the position is that there is some  
4       extreme burden from adding four additional years to the  
5       collection, we simply haven't been told what that is. And I  
6       cannot see it with respect to email collection. You collect  
7       all the email and then you see what you have and then you talk  
8       about burden.

9           MR. METCALFE: But, Your Honor, with all due respect  
10      to that, one of the first things you do in conducting an email  
11      search is set time parameters.

12         THE COURT: Sure. So what you're going to do here  
13      is set the parameter of January 1, 2014. I'm cutting it right  
14      down the middle.

15           So next issue?

16         MS. KRISHNAN: Okay, Your Honor. The next issue has  
17      to do with the City's request for communications between  
18      defendant and one of its suppliers, RJR, or Reynolds American.  
19      And the complaint alleges that the trafficking is conducted by  
20      traffickers purchase cigarettes in Virginia and they bring  
21      them to New York City.

22           And as we included in papers in response to the  
23      motion to dismiss, it's common knowledge in the industry that  
24      Newport cigarettes are in high demand in New York City.  
25      They're referred to in the industry as New York City

1 cigarettes. And they're heavily trafficked from the south to  
2 New York City.

3 And the manufacturer of Newport is RJR. And we have  
4 reason to believe that RJR would have had communications with  
5 the defendant about the volume of the sales to certain  
6 customers for two reasons.

7 One, the defendant has similar communications with  
8 Altria, the other major manufacturer of cigarettes.

9 And two, one of defendant's customers, this is  
10 FreeCo, which is mentioned earlier, has provided documents to  
11 us that we are going to produce to the defendant in which that  
12 company, FreeCo, reaches out to RJR to express concerns about  
13 the volume of Newport cigarettes that -- the demand for  
14 Newport cigarettes from certain of its customers and whether  
15 FreeCo should be concerned about that. And the supplier of  
16 all of the Newport cigarettes was the defendant.

17 And so for those reasons we have reason to believe  
18 that the defendant would have had these communications with  
19 RJR about the volume of their sales to specific customers.

20 And as with requests for similar communications with  
21 Altria, we are willing to negotiate on search terms,  
22 custodians. We're willing to have those discussions about  
23 burden, but the defendant is unwilling to produce anything,  
24 any communications with RJR.

25 THE COURT: Have you --



1 MR. SCHICK: Your Honor, if I could address that?  
2 I'm sorry.

3 THE COURT: Have you subpoenaed RJR?

4 MS. KRISHNAN: We have not at this time.

5 THE COURT: Why not? Wouldn't RJR have those  
6 communications too?

7 MS. KRISHNAN: Certainly that is an avenue the City  
8 could take. We believe the defendant is -- you know, the  
9 defendant is in the action, and the defendant should also have  
10 those communications, so our first -- our first step in the  
11 discovery process was to seek them from the defendant.

12 THE COURT: So the defendant's position is what on  
13 this? That RJR has to be mentioned in the complaint for it --  
14 for them to produce anything?

15 MR. SCHICK: Your Honor, it's beyond that. And this  
16 -- if I could address this briefly, this again goes to the  
17 quintessential fishing expedition.

18 As you can imagine, Your Honor, a wholesaler such as  
19 our client would have an enormous volume of correspondence  
20 with, you know, any of its suppliers.

21 We're in a position now where the Court has already  
22 directed that every retail outlet identified by the City in  
23 its discovery requests we now have to provide, you know,  
24 documents, communications, sales, and all the like.

25 And so having obtained from this court just earlier

1       that ruling that any store that they thought of that was  
2       supposedly engaged in trafficking, or as they said just sold a  
3       volume of cigarettes which one should divine from that is up  
4       to no good, the Court has already said we have to make  
5       production of our communications, of our sales, and the like.

6               To now go and say, okay, now that you've given us  
7       every store -- and it's not limited by manufacturer, right --  
8       you know, if any of those six stores bought Newport  
9       cigarettes, which is the brand that the City just mentioned,  
10      then it will be covered. But to require beyond that a  
11      production involving a manufacturer when there's no specific  
12      showing that --

13             And with all respect to the City, their -- all the  
14      representation at this hearing a moment ago that there is a  
15      document that they have not produced, but that they  
16      characterized in a certain way when there were multiple rounds  
17      of meet and confers and multiple rounds of letter writing to  
18      the Court -- neither party was shy in the -- in the liberty --  
19      in taking the liberty of uploading letters when they had  
20      something else to say.

21             So the Court has received (indiscernible) letters  
22      from the parties and we've had at least that many sessions  
23      among the parties. So to hear, well, we're relying on a  
24      document that we haven't mentioned or shared before shouldn't  
25      be taken into account at all.

1           And, again, you know, if any of these six stores,  
2           you know, bought Newport cigarettes, they'll see it in the  
3           records that we've just been directed to produce. But to open  
4           up beyond that --

5           And Your Honor is correct, if they think that the  
6           targeted thing that -- that they wanted from RJR, let them ask  
7           RJR for it.

8           MS. METCALFE: And just very quickly on that point,  
9           Your Honor mentioned a subpoena to RJR, based on the documents  
10          the City's provided to us so far, the documents they received  
11          from Altria, one pursuant to a subpoena, they were pursuant to  
12          a request for information that the City sent to Altria after  
13          this complaint was filed, and we'll get to those documents  
14          later on this call.

15          I guess my question for Sabita, very quickly,  
16          (indiscernible) subpoena, have you sent a request for  
17          information to RJR similar to the one you sent to Altria?

18          THE COURT: Don't (indiscernible).

19          MS. KRISHNAN: Your Honor, I -- yeah.

20          THE COURT: You don't have to respond to that.

21          Look, you're going to meet and confer on -- you're  
22          looking for primarily emails, yes, Ms. Krishnan?

23          MS. KRISHNAN: Yes. We provided a proposed list of  
24          search terms that we were willing to negotiate on, but, you  
25          know, we didn't get that far.

1           THE COURT: All right. You're going to negotiate  
2           those search terms. I think this -- the communications with  
3           RJR concerning, I don't know what the search terms are, but  
4           volume, sales, and trafficking, whatever the buzz words are,  
5           that you're looking for within reason that's relevant.

6           Now, I want to -- I want to -- the most interesting  
7           issue to me is the next one, is communications with law  
8           enforcement. And I know there was this letter. I know you're  
9           both looking for that, so why don't you tell me about that,  
10          Ms. Krishnan.

11          MS. KRISHNAN: Sure. So I'll start with our request  
12          for communications defendant had with law enforcement  
13          officials. And I don't think that there's any dispute between  
14          the parties that these communications would be relevant, but  
15          the dispute really seems to be about search terms.

16          So we had requested that defendant produce documents  
17          -- communications between the defendant and law enforcement  
18          officials about cigarettes and defendant's position appears to  
19          be that that's too broad and it has to be limited to  
20          communications specifically that are explicitly about  
21          cigarette trafficking.

22          And I think our position is that that's simply too  
23          narrow. Because, you know, as we understand it, that's not  
24          all communications between law enforcement officials and the  
25          defendant that would -- might be relevant to this issue would

1 explicitly reference cigarette trafficking.

2 For example, there might be requests for information  
3 about defendant's sales to specific customers without an  
4 explicit explanation that this is about cigarette trafficking.

5 And I think, again, you know, to the extent this is  
6 about burden or overbreadth, I think we, as with all these  
7 other requests, are willing to look at search term hits and  
8 further negotiate. But we think as a starting point the  
9 search really needs to be for communications about cigarettes.

10 Now, that's the issue with respect to the  
11 plaintiff's request for communications with law enforcement  
12 officials.

13 I don't know if you want me to also address the  
14 defendant's letter about their requests for plaintiff's  
15 communications with law enforcement officials.

16 THE COURT: No. Let's deal with the first issue  
17 first, then I'll hear from the defendant.

18 MS. KRISHNAN: Okay.

19 MS. LU: Your Honor, Atlantic Dominion sells  
20 cigarettes and candy. We don't expect there to be an enormous  
21 amount of communications with law enforcement regarding candy.  
22 We do, however, expect that virtually all of the  
23 communications with law enforcement will touch upon cigarettes  
24 in some way.

25 We proposed much of the search terms you just

1 described for RJR that we look at trafficking. We're happy to  
2 also include volume within a certain number of words of  
3 cigarettes. We think that would be reasonable. But the City,  
4 in our meet and confer discussions, indicated it would only  
5 narrow its demand to those communications regarding  
6 cigarettes. And our position is that's far too broad.

7 THE COURT: I think you're both -- you're both  
8 somewhat unreasonable in this. You're at the poles, polar  
9 opposites, trafficking versus cigarettes.

10 One is going to be over broad, the other is going to  
11 be too narrow, so you need to work -- you need to work to come  
12 up with better or more or search terms. It's relevant and it  
13 goes both ways, right? You each should be producing certain -  
14 - producing this information, so roll up your sleeves and come  
15 up with better search terms.

16 MR. SCHICK: Your Honor, we certainly will undertake  
17 to do so. I think Ms. Metcalfe, as we've already suggested,  
18 you know, documents related to cigarette volume.

19 Again, it's also because of the nature of how law  
20 enforcement is defined. Right? Any filings, regular filings  
21 that they make, just in terms of sales taxes, whatever, would  
22 be encompassed. But we're willing to work with the City on  
23 this. And we've already made proposals and we'll try to make  
24 more as the Court just directed.

25 THE COURT: Now, what about the City, the City

1 producing its communications with law enforcement?

2 UNIDENTIFIED: Sure, Your Honor.

3 Now, I think as I explained in my letter, the City  
4 regularly communicates with law enforcement officials in  
5 furtherance of our common interest in prosecuting and  
6 preventing cigarette trafficking.

7 And I was aware in my discussions with counsel that  
8 there had been such communications relating to the defendant  
9 and relating to the allegations in the complaint, but I was  
10 not aware that there were email communications.

11 And so in my written responses to the defendant's  
12 request, in our meet and confer discussions, I represented  
13 that there were not such email communications. And upon  
14 collecting relevant email and reviewing it, I realize that I  
15 was incorrect and that, in fact, there were email  
16 communications with more than one law enforcement official  
17 responsive to defendant's document requests.

18 Some of those communications, but not all, include  
19 information that was shared pursuant to the common interest  
20 and is in our view protected by the law enforcement privilege.

21 Now, we are reaching out to the law enforcement  
22 officials to determine their position on this matter and our  
23 intention is to confer with them and then make a determination  
24 about which communication we think should be withheld and to  
25 include them on a privilege log.

1           In addition to communication with the law  
2 enforcement officials, there were communications in  
3 furtherance of the law enforcement activity with other  
4 individuals and those communications reflected the privileged  
5 law enforcement information that we obtained from the law  
6 enforcement officials. Some of those communications included  
7 the law enforcement, some did not.

8           And so what we are intending to do is have  
9 conversations with the law enforcement officials about their  
10 position about what is privileged and to produce anything that  
11 is not.

12           And as I already noted, there are communications  
13 that we intend to produce that are not privileged and to  
14 produce a privilege log.

15           And at that point, we are willing to have further  
16 meet and confer discussions with the defendant. And we would  
17 think that if there is any dispute that can't be resolved that  
18 that would be the appropriate point at which to raise it with  
19 the Court, after we've consulted with the law enforcement  
20 officials, after we have produced the non-privileged  
21 communications that we intend to produce and produced a  
22 privilege log.

23           After defendants have reviewed and discussed it with  
24 us, if there is still an issue in that defendant thinks that  
25 things are being improperly withheld, we think that that's the



1 time period at which it should be brought to the Court's  
2 attention. And we can invite the law enforcement officials to  
3 participate if they would like.

4 And at that point, we would be happy to have the  
5 Court even review the withheld communications ex parte to  
6 determine whether they -- whether the Court agrees with our  
7 position on the privilege.

8 But our position is that we intend to produce  
9 documents. We believe there will be some that are withheld.  
10 And we think that to the extent there's any dispute about  
11 them, they can be -- that dispute should and can be addressed  
12 at a later date.

13 MR. SCHICK: Your Honor, may we be heard?

14 THE COURT: of course.

15 MR. SCHICK: Thank you. So two main points.

16 The first is that there's no dispute that these are  
17 highly-relevant, responsive documents. There's no question  
18 whether, you know, upon review, whether they will or won't  
19 relate to the allegations in the complaint. The City has  
20 conceded that they directly relate to the allegations in the  
21 complaint.

22 Now we go to is there any other -- is there any  
23 basis to withhold them?

24 The City throws around the word law enforcement and  
25 it's law enforcement responsibility. But we need to be clear,

1 Your Honor. This is not an instance in which -- since the  
2 City is a plaintiff, we've requested that the City contact its  
3 law enforcement agencies, it's sheriff's department, all sorts  
4 of entities that might have information.

5 What this is, Your Honor, is the civil litigation  
6 team bringing this lawsuit, brought a connected lawsuit,  
7 quote, "Cigarettes Unlimited," to which they actually  
8 threatened previously to add Atlantic Dominion.

9 In connection with the civil litigation against  
10 Atlantic -- against Cigarettes Unlimited and its principals,  
11 the lawyers handling this case subpoenaed, negotiated for,  
12 settled with, obtained, documents to help their litigation.

13 There is absolutely no basis, Your Honor, for the  
14 civil litigators and court counsel who have these documents in  
15 connection with another civil litigation to withhold them  
16 based on references to law enforcement.

17 Your Honor, I served for ten years, almost ten  
18 years, eight years, I'm sorry, in the New York AG's Office.  
19 There was clear line between the criminal folks and the civil  
20 folks. You couldn't obtain something from the criminal folks  
21 for civil litigation. But once you brought a civil  
22 litigation, the fact that I worked for the State, for the  
23 Office of the Attorney General, the fact that my colleagues  
24 were in law enforcement, the fact that we had investigators  
25 and criminal authority meant nothing, right? We were a civil

1 -- we were a civil litigant subject to the same discovery  
2 rules as everybody else.

3 This is not a City search to other agencies. These  
4 are documents this court team has, this court team collected  
5 in connection with bringing this civil lawsuit and a related  
6 civil lawsuit.

7 The suggestion now that they be allowed to withhold  
8 them, the most highly-relevant documents, listen, either  
9 they're going to say Atlantic Dominion did terrible things,  
10 it's a risk we'll take, right, or they're going to undermine  
11 the City's allegations, we're entitled to see those now while  
12 the City is looking through all the Philip Morris, all the  
13 RJR, all the six retail store documents.

14 This is documents they went to pursue, they asked  
15 for in connection with the civil litigation. If they want to  
16 make a representation and sign an affidavit that they're  
17 talking about documents that they asked the sheriff's  
18 department in connection with our subpoena, we'll talk about  
19 it. But it's not that. These are documents they've had in  
20 connection with their civil investigation.

21 (Indiscernible) than anybody else. The City's a  
22 plaintiff, a civil plaintiff. Maybe people are more  
23 responsive to them, maybe people give them things without  
24 subpoenas that other parties don't get, but that's it.  
25 There's just no basis for them to say they'll withhold it,

1 they'll put on a log, we'll fight, then months down the line  
2 they'll come back to you.

3 They're just desperately trying to both generate  
4 evidence they don't have through broad discovery from us, and  
5 desperately trying to withhold from us the most directly,  
6 highly-relevant documents that they indisputably already have.

7 MS. KRISHNAN: Your Honor, can I -- can I just  
8 briefly respond to that?

9 THE COURT: Briefly.

10 MS. KRISHNAN: Yeah. The documents that Mr. Schick  
11 is referring to are not the documents that we're talking about  
12 withholding. We are going to produce all of the  
13 communications with the individuals in the other litigation,  
14 Cigarettes Unlimited.

15 We're going to produce our settlement agreements  
16 with those individuals. We're going to produce our  
17 communications about the settlement agreements. We're going  
18 to produce -- in fact, those individuals didn't have any  
19 documents, but we are going to produce documents that we  
20 obtained from a sheriff in Virginia relating to that company.

21 So that's not at all what we're talking about here,  
22 which is why I suggested the appropriate time to address this  
23 issue is after they have received the documents. And part of  
24 the reason we haven't produced the documents is because of the  
25 last issue that we need to talk about, the protective order.

1 But once they have those documents -- which  
2 everything Mr. Schick just referred to we do intend to produce  
3 -- and it's not what we're asserting is privileged.

4 And so that's why I suggested that the appropriate  
5 time to deal with this is after they've received the documents  
6 we're intending to produce, and they have the privilege log,  
7 and they have -- they can see who we communicated with, and we  
8 can have a more nuanced discussion about this once they know  
9 what we produced and what we withheld.

10 THE COURT: Thank you.

11 MR. SCHICK: Your Honor, extremely briefly, Your  
12 Honor. We didn't say -- I didn't say documents that they got  
13 from Riley and Lash. I said documents they got in connection  
14 with the lawsuits of Riley and Lash.

15 Frankly, it's even more outrageous that the City is  
16 now saying we're going to cherry-pick law enforcement  
17 documents we want you to see and produce them and we're going  
18 to withhold documents we don't want you to see.

19 What the City didn't say now, what counsel didn't  
20 say now, is that they didn't get these documents in connection  
21 with their civil lawsuits and civil investigation. She very  
22 carefully said -- she very carefully said that's what she  
23 received from Riley and Lash.

24 Your Honor, I don't know how it can be that they can  
25 say we have a sheriff from Virginia, we want you to see that

1 document, but we have some other documents we don't want you  
2 to see. That's just not what the (indiscernible) --

3 THE COURT: Yeah. But they're going to -- they're  
4 going to have to produce -- they're going to have to list on a  
5 privilege log anything that they're withholding and you can  
6 challenge it at that point after --

7 MR. SCHICK: Can we --

8 THE COURT: -- after meeting and conferring.  
9 There's no way I can make a ruling that covers all bases at  
10 this point.

11 MR. SCHICK: Can we -- can we set --

12 THE COURT: There's absolutely no way.

13 MR. SCHICK: Can we set the time for when they have  
14 to produce their privilege log and the information the log has  
15 to contain now so we don't have to (indiscernible) --

16 THE COURT: Information that's required in a  
17 privilege log is settled law. I'm not going to add anything  
18 or take anything away from that.

19 You'll get -- the City will produce a privilege log  
20 with all the relevant information that someone needs to assess  
21 whether the assertion of the privilege is valid. And if it  
22 isn't, if it's not on the log, then you'll challenge it and  
23 I'll make a ruling.

24 MR. SCHICK: Can we set a timetable for that log?

25 THE COURT: When are you going to -- when -- it

1       should be one they produce -- when they produce the other  
2       documents. Whenever their document production is due, the  
3       privilege log indicating what has been withheld from that  
4       production should be given.

5               So, Ms. Krishnan, when is the document production  
6       due?

7               MS. KRISHNAN: We don't have any deadlines in this  
8       matter, but I expect that (indiscernible) --

9               THE COURT: Wait a second. Were written discovery  
10      requests served?

11              MS. KRISHNAN: Yes, Your Honor. (Indiscernible) --

12              THE COURT: You have 30 days from the date you get  
13      them to produce the documents.

14              MS. KRISHNAN: Yes. And, Your Honor, we have been  
15      trying to negotiate a protective order with a clawback  
16      agreement for four months now. So once we can finalize that  
17      agreement, we will be in a position to produce documents I  
18      would say within two weeks. And we will include a privilege  
19      log with that.

20              THE COURT: Just one second.

21              (Pause)

22              THE COURT: I'm just taking a look at this docket  
23      sheet. Just a second.

24              (Pause)

25              THE COURT: So you have been producing documents

1 already?

2 MS. KRISHNAN: We have produced. We have done an  
3 initial production.

4 What we haven't yet produced are the email  
5 communications which we've been negotiating the protective  
6 order and a clawback agreement which would be relevant to the  
7 email communications.

8 And we also have several -- we have about 2,000  
9 documents from Altria that we have been ready to produce since  
10 January, but we have, again, been negotiating this protective  
11 order issue.

12 THE COURT: All right. Let's table any schedule.  
13 And I'm inclined to have you folks figure out a schedule and  
14 tell me what it is at a later date.

15 But what is the problem with the -- with the  
16 protective order?

17 MR. SCHICK: Your Honor, from our perspective --

18 MS. KRISHNAN: So at this point --

19 MR. SCHICK: Okay. I'm sorry.

20 MS. KRISHNAN: At this point, I think we are likely  
21 to resolve everything other than the issue that is addressed  
22 in our letters.

23 And so the City obtained documents from Altria.  
24 These were -- they're referenced earlier to requests for  
25 information. And we obtained them with the agreement that we



1 would maintain the documents that Altria produced to us as  
2 confidential documents.

3 And even before the defendant served us with  
4 document requests, we reached to Altria and asked them whether  
5 in connection with this lawsuit that they -- their position  
6 was that the documents were still confidential and if produced  
7 should be treated as such and they said that was their  
8 position and they wanted there to be a protective order in  
9 place.

10 We proposed a protective order to defendant and the  
11 main issue that we haven't been able to resolve is that it  
12 includes a provision that would require confidential documents  
13 to be filed under seal and defendant objects to that.

14 We reached out to Altria and we, you know, explained  
15 the situation and they indicated that they believed that these  
16 were confidential documents that needed to be filed under  
17 seal.

18 So I spoke again with counsel and my proposal to  
19 counsel was that we will produce the documents marked  
20 confidential subject to the protective order we propose. You  
21 can take a look at all the documents, determine which, if any,  
22 you would ever want to file, and if there are documents that  
23 you want to file, one of two things might happen.

24 One, there is a provision in our proposal that if  
25 you have the communication or you have the document yourself

1 in the same form, it's not subject to any additional  
2 obligation.

3 So many of these documents that we have are email  
4 communications between the defendant and Altria. And I  
5 suggested you likely have all those and so they would not be  
6 subject to protection or the requirement that they filed under  
7 -- be filed under seal.

8 And I said to the extent that there are documents  
9 that you want to use, that you don't have, that you don't  
10 think should have to be filed under seal, don't think they're  
11 confidential, our proposal includes a provision by which you  
12 could challenge that designation with the Court and Altria  
13 would have the opportunity at that point to come in and defend  
14 their designation of the document as confidential.

15 But the defendant rejected that proposal and they do  
16 not want to agree to anything that includes the requirement to  
17 file anything under seal.

18 And so, you know, what we're asking Your Honor for  
19 is the Court's intervention here. And if the Court thinks  
20 that this issue of whether documents -- any document would  
21 have to be filed under seal needs to be addressed right now,  
22 then we would just ask that Altria be given the opportunity to  
23 weigh in on why that's appropriate, either their documents,  
24 and I think had we proceeded by subpoena, they would have had  
25 that same opportunity. So that's the issue from our

1 perspective.

2 If the Court is inclined to decide this issue before  
3 we've produced anything, then we would just ask that, you  
4 know, Altria be given a brief opportunity to present their  
5 position on this.

6 THE COURT: Before you produce something, before you  
7 produce anything further, you need a -- you need a protective  
8 order, correct?

9 MS. KRISHNAN: Yes.

10 MR. SCHICK: And there's no dispute about that, Your  
11 Honor.

12 THE COURT: Right. And so I would have to sign off  
13 on that, which has -- which will -- they will have whatever  
14 provisions about confidentiality, filing under seal, whatever.  
15 So the issue is ripe. We've got to resolve it.

16 MS. KRISHNAN: Yes. Yes.

17 THE COURT: But is the defense -- I don't understand  
18 the defendant's position that documents can be designated as  
19 confidential, but the other side can just file them  
20 (indiscernible) --

21 MR. SCHICK: It's actually very (indiscernible) --

22 THE COURT: -- (indiscernible)?

23 MR. SCHICK: I don't think I've ever signed another  
24 one, Your Honor. Which is to say, the basis for and the  
25 reason in civil litigation for people to seek confidentiality

1 means that documents can't be used for any purpose other than  
2 the litigation. That's quite standard.

3 I've never had a wholesale situation where someone  
4 says everything I designate as confidential must be filed  
5 under seal if you want to use it.

6 These are documents that the City has put at issue,  
7 the city has quoted from and referenced in its complaint.

8 And, Your Honor, if the burden flips, that's fine.  
9 Let the City have the burden, you know. If the City wants to  
10 say the following, you know, that if we want to use -- if we  
11 want to use a document that they produced, you know, as  
12 confidential, we can tell them and they could move the Court  
13 to seek for to cause under seal.

14 But I can't be bound. Your Honor, I have the burden  
15 then if (indiscernible). Whoever files under seal has the  
16 burden of establishing to the Court why it's under seal. I  
17 don't believe this should be under seal at all.

18 THE COURT: Yeah. But that's a different issue.  
19 That's a different issue.

20 Whoever has the burden is different than you can run  
21 into court without any -- file with the Court any confidential  
22 document without the other side having a say in it.

23 MR. SCHICK: Your Honor, we've never disputed that.  
24 The City's proposal has been throughout that it's our burden.  
25 We agree that it can't be filed under seal. We can make a

1 motion to the Court for relief from that. That's been the  
2 City's position throughout.

3 If the City is agreeing to what Your Honor is  
4 suggesting, which is that the burden would be theirs or  
5 Altria's to argue to the Court affirmatively why it must be  
6 filed under seal, and that we give them, you know, some notice  
7 before a filing, we are absolutely okay with that as long as  
8 it's clear that it's the party seeking sealing that has the  
9 burden.

10 THE COURT: I wasn't suggesting who bears the  
11 burden. I was simply saying that what I understood the  
12 defendant's position to be that you -- that either can  
13 unilaterally file a document that has been designated as  
14 confidential without any further action. So I guess I  
15 misunderstood what Ms. Krishnan was saying.

16 The dispute is who bears the burden of --

17 MR. SCHICK: Correct. I think -- I think I heard  
18 her say earlier that if Your Honor is inclined to address this  
19 issue today, which of course we are because we keep hearing  
20 about it, then at least Philip Morris should have the chance  
21 to try to convince the Court why it must be under seal. And  
22 we're okay with that. Right? This is their burden. We'll  
23 give them the notice. And they'll come to the court if they  
24 want to.

25 THE COURT: Ms. Krishnan, do you want to hear

1 anything? You want to say anything else?

2 MS. KRISHNAN: Your Honor, I think, as I -- yeah.  
3 Our position is that these are Altria's document. They have  
4 indicated in providing them to us that we must keep them  
5 confidential and that they want them to be filed under seal.  
6 We are --

7 THE COURT: Forget about -- hold on. Stop. Forget  
8 about Altria or anything. The issue is not Altria's  
9 documents.

10 The issue is what is the protective order? Who is  
11 the burden going to be on in a protective order? Is it on the  
12 party producing the confidential documents or the party  
13 seeking to have the confidential documents filed with the  
14 Court?

15 MS. KRISHNAN: We don't have --

16 THE COURT: It should apply -- it should apply --  
17 the burden should apply regardless of whether it's Altria's  
18 documents or FreeCo's documents or anything else.

19 MS. KRISHNAN: Yes, Your Honor.

20 We don't object to the burden being on the person --  
21 on the entity or the person who wants the documents to be  
22 filed under seal. We would not be the one making that  
23 argument.

24 So to the extent the burden on the party that wants  
25 to file it is simply to provide notice, we would not object to

1       that, but we would -- we would request that Altria have the  
2       opportunity to object to that.

3               THE COURT: That's fine. I have no problem with  
4       that. But you have to give enough notice so that you can then  
5       -- or whoever designated the documents confidential can turn  
6       to the non-party who asked them to keep them confidential and  
7       give them notice that, hey, defendants are going to file this  
8       stuff with the Court, you've got two days to prove it should  
9       be kept confidential and filed under seal or whatever the time  
10      period is.

11             MR. SCHICK: That works, Your Honor.

12             THE COURT: Craft the protective order that way and  
13      submit it me and I'll sign it.

14             MR. SCHICK: Thank you, Your Honor.

15             THE COURT: But, I want to -- look, I want to avoid  
16      reviewing documents in camera and figuring out what should be  
17      filed under seal, so, you know, before you come running, meet  
18      and confer. And if it's absolutely necessary that, you know,  
19      something's got to be filed under seal or you need me to look  
20      at it, so be it, but keep it to a minimum, please. Okay?

21             What else do we need to discuss?

22             MR. SCHICK: Your Honor, I think we're up to the --  
23      the issue that the defendant has raised with respect to  
24      plaintiff's responses (indiscernible). We've dealt with, you  
25      know, one of those, and that was law enforcement, but there

1 are other categories set forth in our correspondence. And  
2 with the Court's permission, Ms. Metcalfe will address them.

3 THE COURT: Go ahead. Ms. Metcalfe?

4 MR. METCALFE: Oh, sorry. I was on mute. Hang on.  
5 I just dropped my binder too.

6 (Pause)

7 THE COURT: Hasn't everything been addressed?

8 (Pause)

9 MR. SCHICK: I mean, I (indiscernible). I guess it  
10 depends if we look at the (indiscernible) and other things  
11 through -- if that's all law enforcement issues, but I think  
12 there were other things that they -- that they were  
13 withholding unless -- unless that's been resolved by  
14 (indiscernible).

15 MR. METCALFE: The current (indiscernible), the ones  
16 that we've addressed that were raised in the May 3rd letter  
17 and then our responses I believe have been addressed.

18 The only other issue that was raised with the Court  
19 was the one we submitted in our joint letter at the end of  
20 last month that deals with correspondence and documents  
21 exchanged between the City and two individuals that they've  
22 identified as investigators.

23 Now, we met and conferred about that, and the City  
24 has raised -- has given us some additional information and  
25 provided updated responses. We noted that the responses came



1 in last week, the evening before we were scheduled to have  
2 this call.

3 And as noted in our letter to the Court yesterday,  
4 we do have further concerns based on the City's amended  
5 responses that we intend to meet and confer with them about,  
6 but reserve the right to raise if those meet and confers fail.

7 THE COURT: So you haven't met and conferred on  
8 them. You're going to. And if you can't resolve it, then  
9 you're going to raise it with me?

10 MR. METCALFE: We're going to continue our meet and  
11 confer. And if we can't resolve it, we will raise it.

12 THE COURT: All right. So there's nothing for me to  
13 decide right now?

14 MR. METCALFE: Correct. Thank you, Your Honor.

15 THE COURT: Okay. Thank you. All right.

16 Anything else?

17 MS. KRISHNAN: Not from the City, Your Honor.

18 THE COURT: Okay. I think we need a revised  
19 discovery schedule, yes?

20 MS. KRISHNAN: Yes, Your Honor.

21 THE COURT: Why don't you get me one two weeks from  
22 now. I know you're still waiting on a decision from Judge  
23 Vitaliano, but get me -- what is -- two weeks from now is --  
24 June 3rd, I'd like to see a revised discovery schedule. And  
25 once I get it, I'll set dates for conferences. Okay?

1 MS. KRISHNAN: Your Honor, just to clarify, at our  
2 conference in the fall, Your Honor had indicated that the  
3 parties should proceed with document discovery, but that we  
4 should not proceed to deposition. Do you want --

5 THE COURT: I said that? I'm sorry, I forgot. If I  
6 said that, I said that.

7 And, yeah, it doesn't -- it doesn't make sense I  
8 guess to incur the expense of depositions if Judge Vitaliano  
9 does end up dismissing the case. So why don't you -- do we --

10 All right. If we're not going to do depositions, do  
11 we -- do we even need a schedule for paper discovery because  
12 you've served written requests? Some of them have been  
13 responded to. You're going to respond to the rest of them  
14 soon I would think.

15 And then what else is there after that?

16 MS. KRISHNAN: Your Honor, I think it would be  
17 useful for the parties to have some deadlines for documents.  
18 We could negotiate that.

19 MR. SCHICK: Your Honor, I would say as follows.  
20 We're almost surely, and I say this with some hesitation, but  
21 we're almost surely going to be back before Your Honor once we  
22 receive the privilege log of withheld documents from the City.  
23 And obviously it makes no sense to talk about depositions  
24 before those disputes would be resolved anyway.

25 So, you know, I guess we would say, either we'll be

1 before Your Honor, and in the process of resolving those  
2 disputes, we could then talk about the next phase of them,  
3 but, you know, or we can tell Your Honor that, hey, somehow if  
4 we -- if we resolve the issues of those withheld documents,  
5 we'd have the Court's intervention, we could -- we could, you  
6 know, notify the Court of that and then talk about the next  
7 phase.

8 But it certainly makes no sense, you know, putting  
9 aside the outstanding motion to dismiss, it makes no sense to  
10 talk about a schedule for discovery when the City itself just,  
11 you know, said earlier that, you know, presumably there's  
12 going to be lots of give and take on a privilege log, and  
13 disputes between the parties, and the likelihood, or at least  
14 potential, but probably likelihood, that the Court will have  
15 to get involved in deciding those disputes.

16 THE COURT: Okay. Why don't you --

17 MS. KRISHNAN: Your Honor, I --

18 THE COURT: Ms. Krishnan, go ahead.

19 MS. KRISHNAN: Your Honor, we served our document  
20 requests in December, and we have received far from a complete  
21 production, so I think it would be useful for both parties to  
22 have some deadlines.

23 I don't disagree with counsel's position that we  
24 will likely be before you in the near future with respect to  
25 these privilege log issues, but that can certainly be

1 incorporated in an agreed-upon schedule.

2 THE COURT: Okay. Do so, and submit it by June 3rd.

3 MR. SCHICK: Thank you, Your Honor.

4 THE COURT: All right.

5 MS. KRISHNAN: Thank you, Your Honor.

6 THE COURT: Thank you, folks. We're adjourned.

7 (Proceedings concluded)

8 I, CHRISTINE FIORE, Certified Electronic Court  
9 Reporter and Transcriber, certify that the foregoing is a  
10 correct transcript from the official electronic sound  
11 recording of the proceedings in the above-entitled matter.

12  
13 

14 \_\_\_\_\_ September 21, 2022

15 Christine Fiore, CERT  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25